IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3290 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

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DINABEN DHANSUKHJATI GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3290 of 2002

MR BP DALAL for Petitioner No. 1-2

Mr PR ABICHANDANI, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 27/06/2002

ORAL JUDGEMENT

1. Rule. Shri P.R.Abichandani, learned A.P.P. waives service of Rule on behalf of the Respondent.

2. The applicant - accused No.1 Shrimati Dinaben is the mother in law of deceased Ravina and applicant - accused No.2 Shrimati Hetalben is the sister in law of deceased Ravina i.e. husband's sister of Ravina. They have filed this Application for releasing them on Bail after their Regular Bail Application No.373 of 2002 was

rejected by the learned Additional Sessions Judge, Rajkot on 17.5.2002.

3. The F.I.R. was lodged by Ansuyaben, wife of Ganeshpuri Kakupuri before the Gandhigram Police Station, Rajkot City, on 8.4.2002 at about 7.45 p.m. for the offences u/ss. 498-A, 306, 114 I.P.Code for the incident in question which took place on 8.4.2002 between 11.00 to 11.30 a.m. wherein her daughter Ravina, aged 25 years, mother of infant child (girl) of Six months committed suicide because of the constant torture meted out to her by her husband Bhavesh Dhansukhlal Jati, who has not even filed the Bail Application till today, as stated at the bar by the learned Counsel for the petitioner and by the present applicants - accused.

4. Learned Counsel Shri Dalal for the applicant accused submitted that the averments made in the F.I.R. are general and vague in nature and no specific allegations are made against the present applicants accused and therefore they should be enlarged on Bail. This submission of Shri Dalal cannot be accepted for the simple reason that on perusal of bare averments made in the F.I.R. it is clear that prima facie case is made out against the present applicant - accused for the offences for which they are charged. Apart from that there are statement recorded during the investigation to the effect that it is because of the constant torture and ill-treatment meted out to Ravina she committed suicide.

5. The second submission made by Shri Dalal was that both the applicants accused are falsely involved in the matter. This submission of Shri Dalal cannot be accepted for the simple reason that though the father-in-law of Ravina as well as brother-in-law i.e. husband of applicant - accused No.2 Hetalben, both were residing together in the joint family there is no whisper against them for such torture and ill-treatment meted out to Ravina.

6. The third submission made by Shri Dalal was that immediately prior to the incident no such incident alleged to have taken place in F.I.R. which led Ravina to commit suicide. In support of his submission Shri Dalal tried to rely upon the decision of the Division Bench of this Court in the case of STATE OF GUJARAT v/s. SUNILKUMAR KANAIYALAL JANI, reported in 1996 (2) GLR 797.

7. I have carefully gone through the aforesaid judgment of Division Bench of this Court in Sunilkumar's case (supra). Having carefully gone through said

Judgment I am of the considered opinion that the aforesaid Judgment will have no application to the facts of this case. The said judgment was delivered in an acquittal Appeal. I could not find any reference made by Their Lordships to the provision of Section 113(A) of the Indian Evidence Act in which presumption has to be raised against the accused which has to be discharged by accused. On facts of this case presumption u/s.113(A) of the Indian Evidence Act has to be raised against the applicant accused because deceased Ravina died within 7 years of her married life i.e. within 5 years having infant girl child hardly 6 months old. Ordinarily a woman having minor child of this age would not even think of committing suicide. There must be constant torture and ill-treatment meted out to her which led her to commit suicide in this manner. Be that as it may. If the allegations made in the FIR comes on record by way of evidence during the trial then perhaps there may not be any escape from holding the accused guilty for convicting and sentencing them in accordance with law.

8. Shri Dalal then tried to rely upon the Judgment of the Hon'ble Supreme Court in the case of BHAGIRATHSINH JUDEJA v/s. STATE OF GUJARAT, reported in AIR 1984 SC 372 and submitted that even if this Court comes to the conclusion that there is strong prima facie case against the applicant accused even then this Court should release the applicant accused on bail because there is nothing on record to show that if they are released on bail then they will not be readily available during the trial and they will try to tamper with the evidence more particularly now charge sheet is filed against them. In my considered opinion, the aforesaid Judgment will have no application to the facts of this case because it was a case u/s.307 I.P.Code. Where as in this case offence is committed against the society as a whole. The Hon'ble Supreme Court has recently held that while granting bail the Court must also consider the gravity of the offence, its nature and impact to the society also. Considering all these things this Court in number of cases has taken consistent view that ordinarily the accused, who are charged for such serious offences like Section 304(B), 306 I.P.Code etc. should not be enlarged on bail even if lady accused is there. In fact it is the woman who is the greatest enemy of another woman. It is because of their torture many young have lost their lives.

9. It may be stated that Shri Dalal has argued the matter for a considerable time and addressed the Court on all aspects of the case including the facts and law, therefore this Court is compelled to deal with all the

submissions made on facts as well as on law. However, this court is not impressed by any of the aforesaid arguments advanced by Shri Dalal and therefore this Bail Application is required to be rejected and accordingly it is rejected.

10. Before parting, I must state that whatever observations made by this Court in this Judgment should not come in the way of the applicants-accused during the trial. It goes without saying that the trial Court is bound to decide the case on the evidence adduced before it and not on the basis of any observation made by this Court while deciding the Bail Application.

11. At this stage a request is made by Shri Dalal to direct the trial Court to expedite the hearing of the Sessions Case as early as possible, because the applicants - accused are lady accused and they are in jail. It is true that the applicants - accused are the lady accused aged 45 and 22 years respectively, but that itself would not be a ground to give them precedent over other accused who are in Jail since long.

12. With these observations and directions this Bail Application is summarily rejected. Rule discharged.

sd/-

Date : June 27, 2002 (B.J.Shethna, J.)

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